

January 11, 1999

Ms. Susan Combs  
Commissioner  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711-2847

OR99-0074



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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JOHN CORNYN  
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Dear Ms. Combs:

Your predecessor in office asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 122717.

Section 552.301(a) of the Government Code provides in part that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

In this case, this office did not receive the request for a decision within the 10 business day period mandated by section 552.301(a). Nor did the request bear a United States post office mark indicating a time within the period or other proof that the request was deposited in the United States mail. See Gov't Code §552.308. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381; see Open Records Decision No. 630 (1994). You have not raised any specific compelling

reasons to overcome the presumption that the information is public. Thus, we conclude that the information must be released to the requestor.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/nc

Ref: ID# 122717

Enclosures: Submitted documents

cc: Ms. Elizabeth Schoettler  
5503 West Bellfort Street  
Houston, Texas 77035  
(w/o enclosures)